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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 130

RAILWAY LABOR EXECUTIVES' ASSOCIATION, G. E. LEIGHTY, and D. S. BEATTIE, *Appellants*

v.

UNITED STATES OF AMERICA, *Appellee*

and

INTERSTATE COMMERCE COMMISSION, SOUTHERN RAILWAY COMPANY, and CENTRAL OF GEORGIA RAILWAY COMPANY, *Intervenors-Appellees*

Appeal From the United States District Court for the Eastern District of Virginia

REPLY BRIEF OF APPELLANTS TO MOTIONS TO AFFIRM AND TO DEFER

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In response to the Appellants' Jurisdictional statement filed with this Court on May 29, 1964, the Appellees have filed a variety of documents. The Appellee United States has filed a "Memorandum" in which it agrees with Appellants "that the Commission's order . . . cannot be sustained" [Memo., p. 3] and requests this Court to vacate the judgment of

the court below and remand to the Commission. [Memo. p. 20] The Appellee Interstate Commerce Commission has filed a Motion to Affirm its orders on the ground that no dispute exists between it and Appellants; that its orders contain the protection of Sections 4, 5 and 9 of the Washington Agreement as requested by Appellants and were properly so interpreted by the Commission in its order of February 17, 1964; and, that Intervenor-Appellees Southern Railway Company (Southern) and Central of Georgia Railway Company (Central) are the parties who have refused to apply that protection either as a part of the conditions imposed by the Commission or as a requirement of a separate private contract known as the Washington Agreement between those railroads and the representatives of their employees. [Motion to Affirm, pp. 21-23.]

Southern and Central have not responded to the Jurisdictional Statement but have filed a "Motion to Defer Consideration of Jurisdictional Statement" pending disposition by the court below of their complaint, filed April 13, 1964, to declare invalid the February 17, 1964 order of the Commission. The United States, the Interstate Commerce Commission and the Railway Labor Executives' Association have requested the court below to defer action on that complaint as a decision by this Court on this appeal will render moot any action that court may take.

THE MOTIONS TO AFFIRM AND TO DEFER CONSIDERATION SHOULD BE DENIED

The situation presented to this Court as reflected in the documents now before it is clear. The Commission unquestionably intended to protect the employees of Southern and Central by conditioning its approval of Southern's acquisition of Central upon application

by those railroads of Sections 4, 5 and 9 of the Washington Agreement *inter alia* and claims that in fact and in law it did so condition its orders. Southern and Central contend the Commission did not so condition its orders and have refused to apply those sections of the Washington Agreement to their employees. Those railroads also claim that the purported failure of the Commission to impose Sections 4, 5 and 9 of the Washington Agreement as a condition of its approval somehow absolves them from abiding by those same provisions as contained in the separate private contract which they and their employee representatives executed in 1940.

The United States and the Appellants are in agreement that an agency order so ambiguous and vague as to lead to this result cannot be sustained and should be remanded. Deferral of consideration of this appeal, as requested by Southern and Central, pending a determination of the validity of the Commission's last order would not change this situation regardless of the action taken by the District Court with respect to that order. The Commission's intent and the ambiguity and vagueness of its orders in attempting to carry out that intent would remain unchanged. Deferral would only further delay the application to employees of Southern and Central of the protections the Commission unquestionably intended they should have.

It is respectfully submitted therefore that the motion to Defer should be denied, jurisdiction of this appeal be noted, and the case remanded to the Commission for the imposition of valid conditions which can be understood and which carry out the intent of the Commission.

REQUEST TO WITHDRAW QUESTION NO. 3

The Appellants at this time respectfully request permission of this Court to withdraw from their Appeal Question No. 3 set forth at page 5 of the Jurisdictional Statement.

The withdrawal of this issue will simplify substantially the issues to be considered on this appeal. And, in view of the dearth of factual record with regard to intended "internal improvements" and "technological change" consequent upon Southern's acquisition of Central, will avoid a decision by this Court of an issue of great importance upon a theoretical rather than a factual basis.

Appellants will assume permission to withdraw this issue from consideration has been granted and, unless otherwise instructed by the Court, will not present argument on the issue should the Court note probable jurisdiction of this appeal.

Respectfully submitted,

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